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December 4, 1998

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

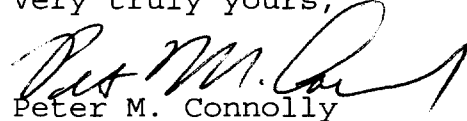
Re: Request For Waiver of Section 20.18(c)
of the FCC's Rules of United States
Cellular Corporation

Dear Ms. Salas:

Herewith transmitted, on behalf of United States Cellular Corporation are an original and two copies of its request for waiver of Section 20.18(c) of the FCC's Rules. The required microfiche copies will be filed in a few days.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Peter M. Connolly

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's)
Rules To Ensure Comparability) CC Docket No. 94-102
With Enhanced 911 Emergency) RM 8143
Calling Systems)

PETITION FOR WAIVER

United States Cellular Corporation ("USCC"), on behalf of its cellular licensee subsidiaries offering digital cellular service, which are listed in Attachment A hereto, hereby, if necessary, requests a waiver of the January 1, 1999 effective date of the "digital" component of Section 20.18(c) of the FCC's Rules until a digital TTY solution becomes commercially available or at least until January 1, 2000. For the following reasons, the requested waiver should be granted to USCC and to all similarly situated cellular carriers.

**I. It is Presently Impossible To
Comply With Section 20.18(c) And
Accordingly It Can And Must Be
Waived Until Compliance Is Feasible**

Section 20.18(c) and its accompanying note provide:

"(c) TTY Access to 911 Services. Licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g. through the use of Text Telephone Devices (TTY).

Note to paragraph (c): Enforcement of the provisions of this paragraph is suspended until [December 31, 1998], in the case of calls made using a digital wireless system that is not compatible with TTY calls, provided that the licensee operating such a digital system shall make every reasonable effort to notify current and potential subscribers who use or may use such a system that they will not be able to make a 911 call over such system through the use of TTY device."

Pursuant to a recent order issued by the Wireless Bureau,¹ Section 20.18(c) will become applicable to "digital wireless systems" on January 1, 1999, unless such systems, by December 4, 1998, request and later secure a temporary waiver of that section. The November 13 Order specifies certain information which should be included in such waiver requests, which will be discussed below.

However, at the outset, USCC wishes to emphasize that there is the strongest possible reason for granting this request and those of similarly situated carriers and indeed for extending the present stay, namely that at least as far as "digital wireless systems" are concerned, Section 20.18(c) cannot now be complied with.²

¹ See Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket 94-102, Order DA 98-2323 (Wireless Telecom Bur.), released November 13, 1998 ("November 13 Order")

² USCC would note that none of its cellular systems offering CDMA or TDMA digital service offers exclusively digital service. At present, less than 10% of USCC's over 2 million subscribers have chosen digital service and the percentage of those customers requiring TTY assistance is very small. All such systems continue to offer analog service as well and

Since September, 1997, the wireless industry, together with other interested parties, including the manufacturers of TTY equipment, 9-1-1 and TRS providers, and organizations representing deaf and hearing impaired persons, through the instrumentality of the Wireless TTY Forum (the "Forum") have been working diligently to develop feasible solutions to the problem of allowing TTY users to have access to 9-1-1 service over digital wireless systems.

The Forum has examined proposed "voice based" solutions whereby the TTY device's "Baudot" tone signals would be passed through the "Vocoder," the device that converts analog speech to digital. This presently cannot be done without an unacceptable "character error rate" owing to the differences between human speech and Baudot "tones." The Forum has also examined future "data based" solutions which will involve proposed modifications to wireless carriers' network infrastructures.

However, despite those efforts, it is undisputed that there are now no commercially available software, hardware and related

all of USCC's customers requiring TTY assistance can and do obtain it on those analog channels through the use of an analog or dual mode telephone. USCC's dual mode telephones can readily be switched between analog and digital frequencies. It would be useful if the FCC would state that the provision of TTY on analog channels is an adequate means of compliance with Section 20.18(c) until digital TTY service of acceptable technical quality is feasible and commercially available.

products which carriers can purchase and install which will bring them into full compliance with the "digital" requirements of Section 20.18(c).

Since it is axiomatic that the law cannot require an impossible act of any person, the FCC should certainly grant USCC the requested waiver, provided USCC is deemed to need a waiver in light of its provision of TTY service to its customers through its analog facilities. Further, neither USCC nor any other CMRS carrier can justly be held responsible for any alleged failure by manufacturers or standard setting and testing bodies to bring products to market as fast as the FCC may wish.

Moreover, Section 255(c) of the Communications Act [47 U.S.C. § 255(c)] requires that a provider of telecommunications service "shall ensure that the service is accessible to and used by individuals with disabilities, if readily achievable." (emphasis supplied). The Americans With Disabilities Act, from which that phrase is taken, defines "readily achievable" as "easily accomplishable and able to be carried out without much difficulty or expense."³ Clearly the "readily achievable" standard is not presently met by the digital component of Section 20.18(c) and it cannot now be determined when the necessary "backward" or "forward" looking remedies for present digital TTY problems will be "readily

³ 42 U.S.C. § 12181 (9).

achievable" within the meaning of the statute.

**II. USCC Has Undertaken Good
Faith Efforts To Comply
With Section 20.18(c)**

The November 13 Order (pages 3-4) states that carriers seeking a waiver should include certain specific information in their waiver request. Such requests should include:

(1) What steps the carrier is taking or intends to take to provide users of TTY devices with the capability to operate such devices in conjunction with digital wireless phones.

(2) When the carrier intends to make this capability available to TTY users. This information should include well-documented timetables and milestones from the carrier regarding the implementation of this capability.

(3) What reasonable steps the carrier will take to address the consumer concerns referenced in the *September 30 Order*.

To those specific requests for information, USCC responds as follows:

(1) USCC, as noted above, does provide all its customers needing TTY service with such service on its "analog" channels. All digital USCC handsets are "dual mode" in nature and provide analog service when customers may need it. USCC also hereby pledges that it will retain sufficient analog capacity in all of its markets to provide TTY service until a digital TTY solution is

developed. As USCC expands its digital service, it will incorporate digital TTY solutions as they become available. Thus, no USCC customer needing this service will ever be without it.

Also, USCC has participated fully in Forum activities and responded to CTIA's requests for information regarding TTY access to digital wireless systems. CTIA summarized and submitted that information in aggregate form, with other CMRS carriers' information, to the FCC on October 30, 1998.

USCC has agreed with Nortel, its equipment supplier, that it will test potential digital TTY solutions in relation to its own Nortel equipment and will work with the manufacturers of mobile telephones concerning this process. It will share the results of those tests with the Forum and the FCC.⁴

(2) It is obviously not possible now to state, with any degree of certainty, when "digital TTY" service will be made available to USCC's customers. Also, the timetable under which such technology will be developed cannot now be responsibly predicted. USCC pledges that it will devote considerable corporate

⁴ USCC would stress, however, the importance of any TTY solution being industry-wide in nature if possible. Multiple, non-interoperable digital TTY technologies would not be desirable, particularly from the standpoint of CMRS "roamers," unless the different digital technologies require that result. The need to develop such a single solution is one reason why the FCC should give the Forum a reasonable time to do its work.

resources to this problem, working in conjunction with Nortel, mobile telephone manufacturers and the Forum, and will deploy an improved digital TTY capacity as soon as it becomes commercially available.

(3) Finally, the Commission asks what steps USCC and other carriers have taken to address the consumer issues referred to in Paragraph 9 and the Appendix to the FCC's September 30, 1998 order on this subject.⁵ Paragraph 9 of the September 30 Order refers to the Forum's TTY "workplan" submitted to the FCC on October 30, 1998. USCC has nothing to add to CTIA's showing concerning the workplan except to note that it describes an impressive record of testing activity and an ambitious but realistic plan to achieve wireless TTY solutions. Conspicuous by its absence in the November 13 Order is any specific criticism by the Wireless Bureau of the workplan or any realistic description of how it could be improved upon.

The "Appendix" to the September 30 Order is a "wish list" of desirable digital TTY features, such as a character error rate below 1%, submitted by consumer representatives participating in the Forum.

⁵ See Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket 94-102, Order, DA-1982, released September 30, 1998 ("September 30 Order").

For the most part, USCC agrees with the goals enumerated in the Appendix and will try to achieve them. However, USCC does not consider it sensible until a generally acceptable digital TTY technology is available to discuss when or how it intends to achieve those goals using that technology. USCC is also unable to commit itself to a specific timetable for achieving a particular goal until it is known whether that goal will be achievable using a particular technology.

For example, while it would certainly be desirable to achieve Goal 2 set forth in the Appendix (wireless callers being able to visually monitor all aspects of call progress provided to voice wireless users [e.g. ring, busy, answered-in-voice, etc.]) and USCC will certainly assist in the industry's attempt to develop such a capability, it is still not clear when that capability will be developed. Nor is it clear that such a capability, which landline TTY users do not now have, is required by the ADA, or Section 255 of the Communications Act or by Section 20.18(c) of the FCC's rules for that matter. It is unfair and unreasonable for the Wireless Bureau to act as if a letter from a Forum participant has the status of law or an FCC rule and to ask carriers how they plan to comply with it.

It is reasonable for the FCC to require wireless carriers to acquire commercially available technologies to improve their

services to persons with disabilities as soon as they can and to take steps to encourage the development of such technologies. Improved digital TTY equipment will be one very important example of such technology. However, the FCC should not threaten licensees with enforcement action for failing to implement technologies which do not yet exist in commercially available form or require carriers to submit detailed timetables for installing such technologies before such timetables can be generated.

USCC will provide digital TTY service as soon as it reasonably can but it cannot do so any sooner than that and certainly not by January 1. Making promises which it may not be able to keep would not alter that fact for USCC or any other carrier.

Also, any rule ultimately adopted by the FCC regarding digital TTY capabilities should also incorporate the requirement of Section 255 of the Communications Act that any improvements in communications services to persons with disabilities be "readily achievable."

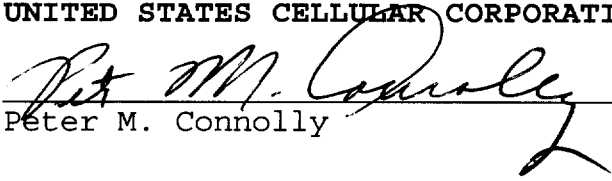
Conclusion

For the foregoing reasons, the FCC should grant USCC any necessary waiver of Section 20.18(c) of the FCC's Rules until a digital TTY solution becomes commercially available or at least until January 1, 2000.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By:


Peter M. Connolly

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December 4, 1998

Its Attorneys

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Florida RSA #8, Inc.
Illinois RSA #3, Inc.
Joplin Cellular Telephone Company, L.P.
Kenosha Cellular Telephone, L.P.
Lar-Tex Cellular Telephone Company, Inc.
Manchester-Nashua Cellular Telephone, L.P.
North Carolina RSA #4, Inc.
North Carolina RSA #9, Inc.
Ohio RSA #1 Limited Partnership
Ohio State Cellular Phone Company, Inc.
Racine Celular Telephone Company
Sheboygan Cellular Telephone Company
Tennessee RSA #4 Sub 2, Inc.
Texahoma Cellular Limited Partnership
Texas #20 Rural Cellular, Inc.
USCOC of Corpus Christi, Inc.
USCOC of New Hampshire RSA #2, Inc.
USCOC of Tallahassee, Inc.
United States Cellular Operating Company
United States Cellular Operating Company - Des Moines
United States Cellular Operating Company of Columbia
United States Cellular Operating Company of Richland
United States Cellular Telephone Company (Greater Knoxville), L.P.
United States Cellular Telephone Company (Greater Tulsa)
Victoria Cellular Corporation
Waterloo Cedar Falls Celltelco
Yakima MSA Limited Partnership

CERTIFICATE OF SERVICE

I, Theresa Belser, a secretary in the offices of Koteen & Naftalin, L.L.P., hereby certify that on this 4th day of December 1998, I caused copies of the foregoing "Petition for Waiver of United States Cellular Corporation" to be sent to the following by first class mail, postage prepaid:

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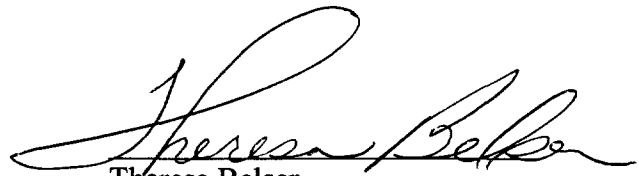
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